

January 23, 2006

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VIA COURIER

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

Federal Communications Commission
Office of Secretary

In re: *Closed Captioning and Video Description of Video Programming –
Implementation of Section 305 of the Telecommunications Act of 1996 – Video
Programming Accessibility*

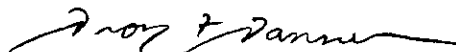
**CGB-CC-0051 – Opposition of Telecommunications for the Deaf and Hard of
Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing
Consumer Advocacy Network, and Hearing Loss Association of America to the
Petition for Exemption from Closed Captioning Requirements Filed by First
United Methodist Church of Colorado Springs**

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and Hearing Loss Association of America hereby submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the closed captioning requirements filed by First United Methodist Church of Colorado Springs.

An original and two (2) copies of this filing are enclosed. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed envelope provided. Should you have any questions concerning this matter, please do not hesitate to contact us.

Respectfully submitted,



Paul O. Gagnier
Troy F. Tanner

Their Counsel

Enclosure

Marlene H. Dortch, Secretary

January 23, 2006

Page 2

cc: via e-mail:

Ms. Amelia Brown (CGAB)

Ms. Traci Randolph (CGAB)

Mr. Claude L. Stout (TDI)

Mr. Kelby N. Brick, Esq. (NAD)

Ms. Cheryl Heppner (DHHCAN)

Ms. Brenda Battat (HLAA)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning and Video Description)	
of Video Programming)	
)	CGB-CC-0051
Implementation of Section 305 of the)	
Telecommunications Act of 1996 --)	
)	
Video Programming Accessibility)	

**OPPOSITION OF TELECOMMUNICATIONS FOR THE DEAF AND HARD OF
HEARING, INC., NATIONAL ASSOCIATION OF THE DEAF, THE DEAF AND HARD
OF HEARING CONSUMER ADVOCACY NETWORK, AND THE HEARING LOSS
ASSOCIATION OF AMERICA TO
THE PETITION FOR EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS
FILED BY THE FIRST UNITED METHODIST CHURCH OF COLORADO SPRINGS**

Claude L. Stout
Executive Director
Telecommunications For The Deaf &
Hard of Hearing, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910
(301) 589-3006 (TTY)

Paul O. Gagnier
Troy F. Tanner
Swidler Berlin LLP
3000 K Street, NW, Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 295-8478 (Facsimile)

Kelby N. Brick, Esq.
Associate Executive Director
National Association of the Deaf
Law and Advocacy Center
814 Thayer Avenue
Silver Spring, MD 20910
(301) 587-7730 (Voice and TTY)
(301) 587-0234 (Facsimile)

Cheryl Heppner
Vice Chair
The Deaf and Hard of Hearing Consumer
Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22030
(703) 352-9055 (Voice)
(703) 352-9056 (TTY)
(703) 352-9058 (Facsimile)

Brenda Battat
Senior Director of Policy and Development
The Hearing Loss Association of America
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814
(301) 657-2248 (Voice)
(301) 657-2249 (TTY)
(301) 913-9413 (Facsimile)

Dated: January 23, 2006

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE LEGAL STANDARD FOR GRANTING A PETITION FOR EXEMPTION	3
III.	PETITIONER HAS PRESENTED INSUFFICIENT INFORMATION TO DEMONSTRATE THAT COMPLIANCE WITH THE CAPTIONING REQUIREMENT WOULD IMPOSE AN UNDUE BURDEN	4
A.	Exemption Criteria Under Section 79.1(f)(2)	5
B.	Exemption Criteria Under Section 79.1(d)(8)	10
C.	Sign Language Translation An Unacceptable Alternative.....	11
IV.	CONCLUSION.....	12

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**OPPOSITION TO THE PETITION FOR EXEMPTION FROM CLOSED
CAPTIONING REQUIREMENTS FILED BY THE
FIRST UNITED METHODIST CHURCH OF COLORADO SPRINGS**

I. INTRODUCTION

Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association of the Deaf, the Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America (together, "Commenters"), by their undersigned counsel, hereby submit their opposition to the petition for an exemption ("Petition") from the Commission's closed captioning requirements for the video program "Sunday Celebration," filed by the First United Methodist Church of Colorado Springs ("Petitioner"), the program's producer.

Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind, so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

Established in 1880, the National Association of the Deaf ("NAD") is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million

deaf and hard of hearing Americans across a broad range of areas including education, employment, health care, and telecommunications. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

The Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN"), established in 1993, serves as the national coalition of organizations¹ representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

The Hearing Loss Association of America ("HLAA") is the nation's foremost consumer organization representing people with hearing loss. HLAA's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. The HLAA mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA provides cutting edge information to consumers, professionals and family members through their website.

www.hearingloss.org, their award –winning publication, *Hearing Loss*, and hearing accessible national and regional conventions. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

¹/ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

Commenters fully support the creation of programming to address the diversity of interests and views of the American public, including programs that derive their inspiration from addressing religious and spiritual matters. Commenters respectfully submit, however, that the Petition does not meet the statutory requirements necessary to support an exemption from the closed captioning rules or Petitioner's contention that compliance with the closed captioning requirements would impose an undue burden.² As set forth below, Petitioner has provided insufficient information to establish that the legal standard for granting the Petition has been met. Petitioner also has failed to establish that the program in question qualifies for an exemption under Section 79.1(d)(8) of the Commission's Rules. Commenters therefore respectfully oppose grant of the Petition.

II. THE LEGAL STANDARD FOR GRANTING A PETITION FOR EXEMPTION

Section 713 of the Communications Act of 1934, as amended, generally requires that video programming be closed captioned, regardless of distribution technologies, to ensure that it is accessible to persons with hearing disabilities.³ The Commission has the authority to grant a petition for an exemption from the closed captioning requirements upon a showing that the requirements would impose an undue burden on the video programming provider or video owner.⁴ Congress defined "undue burden" to mean "significant difficulty or expense."⁵

A petition seeking a waiver of the captioning rules must demonstrate that compliance would result in an undue burden within the meaning of Section 713(e) and Section 79.1(f) of the Commission's rules.⁶ Section 713 requires the Commission to consider four factors when determining whether the closed captioning requirements will impose an undue burden: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of

^{2/} 47 U.S.C. § 613(e).

^{3/} *Id.*

^{4/} *Id.*

^{5/} *Id.*

the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁷

Section 79.1(f) of the Commission's rules sets forth the Commission's procedures for seeking an exemption from the closed captioning requirements on the basis that compliance would impose an undue burden.⁸ A petition for an exemption from the closed captioning requirements must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden.⁹ Such petition must contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on by the petitioner.¹⁰ It must also describe any available alternatives that might constitute a reasonable substitute for the captioning requirements.¹¹

III. PETITIONER HAS PRESENTED INSUFFICIENT INFORMATION TO DEMONSTRATE THAT COMPLIANCE WITH THE CAPTIONING REQUIREMENT WOULD IMPOSE AN UNDUE BURDEN

Petitioner requests an exemption from the closed captioning requirements for its video program "Sunday Celebration," asserting that compliance would impose an undue burden on Petitioner.¹² The Petitioner asserts that it explored incorporating a closed captioning feature into its weekly broadcast, and that adding such a feature would "more than double" production costs.¹³ Further, Petitioner claims that as a result of these increased costs, "it would mean the end of [Petitioner's] broadcast."¹⁴ As Commenters discuss below, the Petition offers insufficient evidence to demonstrate that compliance would impose an undue burden under the four statutory

^{6/} 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).

^{7/} *Id.*

^{8/} 47 C.F.R. § 79.1(f).

^{9/} *Id.* § 79.1(f)(2).

^{10/} *Id.* § 79.1(f)(9).

^{11/} *Id.* § 79.1(f)(3).

^{12/} Petition at p.2.

^{13/} *Id.*

^{14/} *Id.*

exemption factors. The Petition therefore does not meet the legal standard for granting a request for exemption of the closed captioning rules.

Petitioner also notes that its broadcast is a locally produced and distributed non-news program with no repeat value, and the electronic news room technique of captioning is unavailable.¹⁵ Aside from this bare assertion, Petitioner fails to offer the information necessary to establish that its program qualifies for an exemption under Section 79.1(d)(8) of the Commission's Rules, which pertains to certain locally produced non-news programs of local public interest.¹⁶

A. Exemption Criteria Under Section 79.1(f)(2)

As more fully discussed below, Commenters respectfully submit that the Petition is not supported by sufficient evidence to demonstrate that compliance with the closed captioning requirements would impose an undue burden upon Petitioner as required by the statutory factors set forth under Section 79.1(f)(2) of the Commission's rules.¹⁷

First factor: The nature and cost of the closed captions. In judging the sufficiency of information filed to support a claim that the cost of implementing closed captioning will impose an undue burden, the Commission looks to whether the petitioner:

- (1) sought competitive pricing from multiple sources;
- (2) submitted copies of the correspondence received from such captioning companies, indicating a range of quotes;
- (3) provided details regarding its financial resources; and
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships.¹⁸

^{15/} *Id.*

^{16/} 47 C.F.R. § 79.1(d)(8).

^{17/} 47 C.F.R. § 79.1(f)(2).

^{18/} *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13605 (2001) ("*Outland Sports*") (advising that entities seeking a waiver of the captioning requirements seek cost quotes from multiple sources and provide correspondence evidencing the quotes obtained, provide detailed financial information, and discuss whether any efforts were made to recoup the cost of

Moreover, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.¹⁹ Failure to provide the foregoing information and to establish that the Petitioner pursued other possible means of gaining captioning hinders the Commission's assessment of the impact of the cost of captioning on Petitioner.²⁰

Petitioner asserts that it currently spends \$350 per episode to broadcast "Sunday Celebration" on UPN 57 in Colorado Springs.²¹ Petitioner further alleges that "live closed captioning would double our costs."²² However, Petitioner provides no documentation to support the assertion that adding a closed captioning feature to its programming would double its costs. Petitioner states that its budget for "Sunday Celebration" for fiscal year 2005-2006 is \$58,946.49, but then fails to offer any supporting documentation demonstrating its actual costs beyond an unsubstantiated assertion that it pays television broadcaster UPN 57 \$350 per week for air time.²³ Assuming airtime costs at \$350 each for 53 1-hour programs (52 weeks plus Christmas Eve),²⁴ airtime costs would amount to \$18,550 and other production costs were budgeted at \$40,764.79. However, Petitioner further claims that the budget for its broadcast operations included the cost of a full-time staff position to coordinate the TV broadcast and oversee the volunteers, but that since the budget was approved, petitioner has "had to eliminate that paid position because of other budgetary restraints."²⁵ As such, it appears that Petitioner's budget does not reflect the actual income or actual expenses for any of Petitioner's operations.

closed captioning). See also *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13611 (2001) (reviewing sufficiency of information provided with respect to the four factors).

^{19/} *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997).

^{20/} *Outland Sports*, ¶ 7.

^{21/} Petition at p.2.

^{22/} *Id.*

^{23/} Petition at p.13.

Petitioner's failure to provide accurate and substantiated financial information makes it virtually impossible to determine whether it meets the criteria for an exemption.

Petitioner may intend to mean that the cost to provide closed captioning might equal its current cost for air time, or approximately \$350 per hour or \$18,550 for its 53 annual programs. However, Petitioner has not given any indication that efforts were made to seek competitive pricing from alternative captioning companies or, if it did, who those companies or individuals may be. In sum, Petitioner has failed to demonstrate that it has sought competitive pricing from multiple sources.

Petitioner, moreover, did not provide sufficient information regarding the financial resources upon which it relies to produce its video program. With total income for fiscal year 2005-2006 estimated at more than two million dollars (\$2,129,795.43), and annual expenditures associated with the program "Sunday Celebration" stated as \$18,550, petitioner fails to demonstrate how incorporating a closed captioning feature into its weekly broadcast would substantially burden its operations.²⁶ Petitioner provides no documentation demonstrating closed captioning would in any way strain its considerable annual budget.

Further, Petitioner fails to describe its general financial condition, and state whether it has other means to recoup the cost of captioning, such as through sponsorships or grants, or whether Petitioner solicited captioning assistance from the distributors of its programming. As to the latter, the Commission recently determined that petitioners must make an effort to solicit such assistance and provide the distributor's response to its solicitation.²⁷ Without such detailed information, the Commission cannot gain an understanding of the overall resources of Petitioner or make accurate findings regarding the cost of closed captioning. As a result, the Petition

²⁴ / *Id.* at p. 1.

²⁵ / *Id.* at pp. 2-3.

²⁶ / *Id.*

provides insufficient information for the Commission to assess the impact of adding captioning upon Petitioner's resources. Petitioner has therefore failed to provide sufficient evidence to support a claim for exemption under the first factor.

Second factor: The impact on the operation of the provider or program owner. The Petition provides no information describing the impact captioning would have on Petitioner's operations. Petitioner claims that compliance with the closed captioning rules would "double our costs" and result in "the end of our broadcast."²⁸ However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. Further, Petitioner fails to provide any additional information to explain what alternatives to meeting the Commission's closed captioning rules have been considered, including what sources for closed captioning were considered. Given that such factual information has not been provided, Petitioner has not provided the Commission sufficient factual basis for assessing the impact of adding captioning upon Petitioner's operations. As a result, the Petition provides the Commission with insufficient basis for considering whether Petitioner's request for exemption finds support under the second factor.

Third factor: the financial resources of the provider or program owner. Commission Rule 79.1(f)(2) provides that a petition for exemption "must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden."²⁹ Additionally, in determining whether the closed captioning requirements impose an undue burden, the Commission must consider the resources that the petitioner has chosen to devote to the program in the context of the overall budget and revenues of the petitioner – and not merely

^{27/} See *Commonwealth Productions, Video Programming Accessibility, Petitioner for Waiver of Closed Captioning Requirements*, CSR 5992, Memorandum Opinion and Order, ¶ 3 (Mar. 26, 2004).

^{28/} Petition at p.2.

^{29/} 47 C.F.R. § 79.1(f)(2).

the cost of captioning in relation to a particular program.³⁰ Here, Petitioner has failed to provide sufficient evidence, instead relying on unsubstantiated assertions regarding the high costs of captioning and vague statements concerning production costs and income.

Beyond Petitioner's unsubstantiated assertion that it "simply could not afford to stay on the air," Petitioner provides no information about how the incorporation of closed captioning in its programming would impact its financial condition or budget.³¹ Petitioner has a substantial budget that exceeds two million dollars annually.³² Petitioner offers no documentation demonstrating how closed captioning for "Sunday Celebration" would impose a burden on its annual budget. Even if the accuracy of Petitioner's unsubstantiated assertion that air time costs \$350 per week is assumed, air time only totals \$18,550 annually. Petitioner further states that "Sunday Celebration" is "produced by volunteers from the congregation."³³ Assuming the accuracy of Petitioner's unsubstantiated assertion that the cost of closed captioning would double its costs, reallocating another \$18,500 (less than 1% of its annual budget) to its production costs to provide captioning can hardly be construed as an undue burden. Such information would enhance the Commission's understanding of the resources available to support captioning of "Sunday Celebration." In the absence of such detailed information regarding Petitioner's financial resources, however, the Petition fails to find support under the third factor.

Fourth factor: The type of operation of the provider or program owner. Petitioner provides insufficient information regarding the type of operations that it runs. In order for the Commission to determine whether the Petition is supported under the fourth factor, Petitioner should have provided detailed information regarding its operations and explained why or how complying with the closed captioning requirements would result in significant difficulty for

³⁰ *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997) ("Report and Order").

³¹ Petition at p. 2.

Petitioner because of the type of operations involved. Petitioner fails to explain why the nature and/or specific attributes of its operations provides a basis to exempt it from the captioning rules. Lacking such information, the Petition fails to demonstrate that an exemption is warranted under the fourth factor.

B. Exemption Criteria Under Section 79.1(d)(8)

Petitioner claims that its video program is exempt from the closed captioning requirements pursuant to Section 79.1(d)(8) of the Commission's Rules. In Section 79.1(d)(8), the Commission exempted from the captioning requirements video programming "that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable." The Commission established this category in recognition of the real possibility that the captioning requirement could result in sufficient economic burden such that certain types of locally produced and distributed non-news programs with no repeat value would not be televised at all. The Commission emphasized, however, that this "narrowly focused exemption" will "apply only to a limited number of truly local materials, including, for example, local parades, local high school and other nonprofessional sports, live unscripted local talk shows, and community theatre productions . . . The programming in question would have to be locally created and not networked outside of the local service area."³⁴

Petitioner asserts that its video program is a locally produced and distributed non-news program, and the "electronic news room" technique of captioning is unavailable. While these may be factors in evaluating whether Petitioner qualifies for an exemption from the closed captioning requirements pursuant to Section 79.1(d)(8) of the Commission's Rules, Petitioner

³² Petition at p. 13.

³³ Petition at p. 1.3 (which states that "Sunday Celebration" is distributed only locally).

³⁴ Report and Order, at 3342.

provides insufficient information to qualify for an exemption from the closed captioning rules on this basis. Petitioner offers no information to establish that its program is “truly local” in nature. UPN 57, which carries “Sunday Celebration,” is broadcast over a large geographic area in central Colorado that covers several significant metropolitan areas. UPN 57 is not only transmitted from an antenna on Cheyenne Mountain to the Colorado Springs metropolitan area, it is also carried on Comcast’s cable television network in the Colorado cities of Pueblo and Tri-Lakes.³⁵ In aggregate, these metropolitan areas have a population that exceeds 450,000.³⁶ Therefore, Petitioner’s programming appears to have a significant regional audience, not just a local one. As a consequence, the Commission has no basis for finding that Petitioner’s program qualifies for an exemption from the captioning requirements under Section 79.1(d)(8).

C. Sign Language Translation An Unacceptable Alternative

Petitioner also appears to argue that it should be granted a waiver from the closed captioning rules because as an “alternative [to closed captioning] we have a sign language interpreter shown in an inset for the program.”³⁷ It is commendable that Petitioner is attempting to reach out to members of the deaf and hard of hearing community who communicate primarily in sign language. However, the use of a sign language interpreter inset is not and has never been considered a reasonable substitute for closed captioning under the rules.³⁸

³⁵ See http://www.kxrm.com/Global/story.asp?S=273286&nav=menu126_15 (which discusses UPN 57’s regional distribution).

³⁶ See <http://en.wikipedia.org/wiki/Colorado> (which states that Col. Springs and Pueblo have populations of 360,890 and 104,600, respectively).

³⁷ Petition at p. 2.

³⁸ One of the factors the FCC will consider in a petition for exemption to the closed captioning rules are “available alternatives that might constitute a reasonable substitute for the closed captioning requirements, including but not limited to, text or graphic display of the content of the audio portion of the programming.” See http://www.fcc.gov/cgb/dro/caption_exemptions.html.

IV. CONCLUSION

For those reasons, Petitioner's request for exemption from the closed captioning requirements is not supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden within the meaning of Section 713 of the Act.

Furthermore, the Commission has no basis for finding that Petitioner's program qualifies for an exemption from the captioning requirements under Section 79.1(d)(8).

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WHEREFORE, for the foregoing reasons, Commenters respectfully oppose grant of the Petition.

Respectfully submitted,

Claude L. Stout
Executive Director
Telecommunications For The Deaf &
Hard of Hearing, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910
(301) 589-3006 (TTY)

Kelby N. Brick, Esq.
Associate Executive Director
National Association of the Deaf
814 Thayer Avenue
(301) 587-0234 (Facsimile)
(301) 587-7730 (Voice and TTY)
(301) 587-0234 (Facsimile)

Brenda Battat
Senior Director of Policy and Development
The Hearing Loss Association of America
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814
(301) 657-2248 (Voice)
(301) 657-2249 (TTY)
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Dated: January 23, 2006



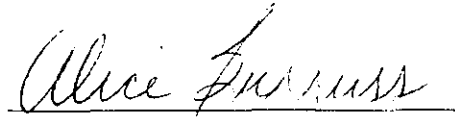
Paul O. Gagnier
Troy F. Tanner
Swidler Berlin LLP
3000 K Street, NW, Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 295-8478 (Facsimile)

Cheryl Heppner
Vice Chair
The Deaf and Hard of Hearing Consumer
Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22030
(703) 352-9055 (Voice)
(703) 352-9056 (TTY)
(703) 352-9058 (Facsimile)

CERTIFICATE OF SERVICE

I, Alice Burruss, do hereby certify that, on January 23, 2006, a copy of the foregoing Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America People to the Petition for Exemption from Closed Captioning Requirements Filed by the First United Methodist Church of Colorado Springs, as filed with the Federal Communications Commission in CGB-CC-0051, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

David C. Jackson
Director of Administration
First United Methodist Church
420 N. Nevada Ave
Colorado Springs, CO 80903

A handwritten signature in cursive script, reading "Alice Burruss", is written over a horizontal line.